

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

IAN LEACH,

Plaintiff,

v.

CITY OF TACOMA, *et al*,

Defendants.

Case No. C24-5055-DGE-MLP

ORDER

This matter is before the Court on Defendants’ Motion for Leave to Amend the Pleadings. (Def.’s Mot. (dkt. # 22).) Plaintiff opposed the motion. (Pl.’s Resp. (dkt # 28).) Defendants filed a reply. (Dkt. # 30.) Having considered the parties’ submissions, the balance of the record, and the governing law, Defendants’ Motion (dkt. # 22) is GRANTED, as further explained below.

Under Federal Rule of Civil Procedure 16(b)(4), a scheduling order may be modified only for “good cause” and with the Court’s consent. To establish “good cause,” the moving party must show that it could not reasonably meet the deadlines set in the scheduling order despite diligent efforts. *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992). The Court’s deadline for amendments was June 10, 2024. (Dkt. #16.) Defendants acknowledge this

1 deadline has passed but argue new developments in related criminal proceedings justify the  
2 amendment. (Def.'s Mot. at 8-9.)

3 Plaintiff, however, contends Defendants failed to exercise due diligence, asserting they  
4 had sufficient information to raise an affirmative defense before the June 2024 deadline. (Pl.'s  
5 Resp. at 5.) Plaintiff points to several instances when Defendants were aware of Anthony  
6 Edward Huff-McKay's involvement, such as when Defendants identified him as a witness in  
7 early 2024 and raised self-defense as an affirmative defense in February 2024. (*Id.* at 5-6.)  
8 Plaintiff argues Defendants could have disclosed this defense months earlier, thereby permitting  
9 timely discovery and amendment. (*Id.*)

10 The Court finds that Defendants acted with reasonable diligence in pursuing this  
11 amendment. Following Mr. Huff-McKay's conviction on June 6, 2024, Defendants promptly  
12 ordered the trial transcript, which was not received until late August. (Yotter Decl. at ¶¶ 13-15  
13 (dkt. #23).) The transcript provided specific factual support critical to this defense. (*Id.* at  
14 ¶¶ 20-24.) Defendants informed Plaintiff of their intent to amend within three weeks of receiving  
15 the transcript, demonstrating a prompt and diligent response to new, material information. (*Id.* at  
16 ¶¶ 17-19.) While Plaintiff contends the foreseeability of Mr. Huff-McKay's involvement  
17 obviated the need to wait for the transcript, the Court concludes that Defendants' approach was  
18 reasonable and that the foreseeability of this defense does not outweigh the showing of good  
19 cause.

20 Federal Rule of Civil Procedure 15 states that once the period for amendment as of right  
21 has passed—as it has in this case—a party may amend its pleading “only with the opposing  
22 party’s written consent or the court’s leave,” and that leave “shall freely be given when justice so  
23 requires.” Fed. R. Civ. P. 15(a)(2); *see also Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d

1 1048, 1051 (9th Cir. 2003) (Leave to amend is applied “with extreme liberality.”). Courts  
2 consider several factors in determining whether to grant leave to amend, including undue delay,  
3 bad faith, repeated failure to cure deficiencies, undue prejudice to the opposing party, or futility  
4 of the amendment. *Foman v. Davis*, 371 U.S. 178, 182 (1962).

5 Plaintiff argues that permitting this amendment would be prejudicial, as it limits  
6 Plaintiff’s opportunity to conduct discovery on Defendants’ new third-party defense. (Pl.’s Resp.  
7 at 5.) Plaintiff notes that the three-year statute of limitations has now expired and that earlier  
8 disclosure would have enabled Plaintiff to propound discovery specifically addressing this  
9 defense and potentially add Mr. Huff-McKay as a third-party defendant. (*Id.*) Plaintiff also  
10 contends that the delay undermines Plaintiff’s ability to prepare for trial, creating the risk of an  
11 “empty chair” defense that could unfairly disadvantage Plaintiff. (*Id.* at 6.)

12 While the Court recognizes Plaintiff’s concerns about discovery limitations, it finds that  
13 any prejudice to Plaintiff is mitigated by the current procedural stage of the case. Discovery  
14 remains open for another four months, no trial date has been set (dkt. # 27), and no depositions  
15 have been conducted to date. (Yotter Decl. at ¶ 30.) Nor is there any indication that this  
16 amendment will introduce issues outside the scope of Plaintiff’s existing claims, allowing  
17 Plaintiff adequate opportunity to address this defense within the discovery period. Given these  
18 factors, any potential prejudice to Plaintiff is minimized by the ongoing discovery period and the  
19 early procedural stage of the case.

20 Finally, Plaintiff argues that any further delay will impede the trial, which has already  
21 been postponed multiple times. (Pl.’s Resp. at 6.) The Court acknowledges Plaintiff’s desire to  
22 avoid further delays. That said, amendment is unlikely to cause a continuance at this stage, as  
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1 discovery remains open and no trial date has been set. (Dkt # 27.) Thus, this factor is at most  
2 neutral in its impact.

3 For these reasons, the Court GRANTS Defendants' Motion for Leave to Amend.  
4 Defendants shall file their amended answer within 7 days of this Order. The Clerk is directed to  
5 send copies of this order to the parties and to the Honorable David G. Estudillo.

6 Dated this 13th day of November, 2024.

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8 MICHELLE L. PETERSON  
9 United States Magistrate Judge  
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